DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0095
Sales/Use Tax
For the Years 1999-2001

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ISSUE

I.   Sales and Use Tax-Prizes

Authority: Ind. Code § 6-2.5-3-1; Ind. Code § 6-2.5-3-6; Ind. Code § 6-2.5-4-1; *Maurer v. Indiana Dept. of State Revenue*, 607 N.E.2d 985 (Ind. Tax 1993).

Taxpayer protests the assessment of use tax with respect to automobiles given away as part of a promotional giveaway.

II.   Sales and Use Tax-Out-of-State Mailings

Authority: Ind. Code § 6-2.1-3-3.5; Ind. Code § 6-2.5-5-24.

Taxpayer protests the assessment of sales tax with respect to mailings Taxpayer claims were sent to out-of-state addresses.

STATEMENT OF FACTS

Taxpayer is a company that operates a riverboat casino in Indiana. Periodically, Taxpayer engaged in prize giveaways of automobiles and boats to customers. The nature of the giveaways would work in this manner: a contestant would enter a sweepstakes held by the Taxpayer for a car to be provided by an automobile or boat dealer. Taxpayer would display the automobile at its casino during the contest period; however, the dealer would be responsible for insuring the automobile. If the contestant was the winner of the drawing, Taxpayer would pay the dealer that provided the prize the fair market value of the prize. The contestant would go to the dealer and the car would be handed over to the contestant, who would be responsible under the terms of the contest for all applicable taxes and registration of the automobile or boat.

Taxpayer was audited by the Department for sales tax. As a result of the audit, Taxpayer was assessed use tax, based on the theory that it used the automobiles or boats in Indiana as part of its giveaway as part of its business. Taxpayer was also assessed sales and use tax on flyers, a portion of which Taxpayer maintained was sent outside Indiana. Taxpayer has protested the

assessment, and separately filed a claim for refund with respect to unrelated issues not discussed in this Letter of Findings.

I.   **Sales and Use Tax-Prizes**

DISCUSSION

Taxpayer argues that it is not subject to sales and use tax because it does not use the automobiles or boats in Indiana, and because it never owned the automobiles or boats. Taxpayer argues that the relevant transaction is actually a transaction between the winning contestant and the car or boat dealer, and that this transaction is the one that should result in the imposition of sales and use tax as appropriate. Taxpayer further provides copies of contracts with car dealers to buttress its claim, with the relevant conditions stated above.

With respect to the issue of sales tax for the automobiles and boats that were part of its prize giveaways, the case of *Maurer v. Indiana Dept. of State Revenue*, 607 N.E.2d 985 (Ind. Tax 1993) is directly on point. In that case, a charity raffle was held for an automobile. Under the contract between the charity and the automobile dealer, the charity was to pay the fair market value of the automobile to the dealer. *Id.* at 988. Taxpayer went to dealer to get the car; however, the dealer refused to issue the car until the taxpayer paid the sales tax on the automobile. *Id.* Taxpayer paid the tax, filed a claim for refund which was denied by the Department, and appealed. The Tax Court held that the title of the car transferred from the dealer to the charity, and that this constituted the retail transaction subject to tax (but for the charity's exemption from taxation). *Id.* Thus, the transaction between dealer and taxpayer was not a retail transaction. Further, the Tax Court held that the transaction between the taxpayer and the charity was one of a raffle ticket, and not one for an automobile, thus allowing taxpayer's refund for sales tax. *Id.* at 989. Finally, the court held that the taxpayer was not subject to use tax because the car was not acquired in a retail transaction. *Id.* at 990.

In this case, almost exactly the same fact situation arose as the one in *Maurer*. The only difference in this case is that Taxpayer in the current case is not an exempt entity. The effective result of the drawing was a retail transaction between the car or boat dealer and Taxpayer, followed by a transfer to the winning contestant, even though Taxpayer never had registered title in its name. *Id.* at 988. Accordingly, Taxpayer and the automobile or boat dealer engaged in a transaction subject to sales and use tax. Ind. Code § 6-2.5-3-2(a) (occasional sales); Ind. Code § 6-2.5-4-1(b) (retail transactions). Further, by giving the automobile away at its Indiana casino, Taxpayer has exercised a right or power of ownership- used, within the statutory meaning- the product in Indiana, regardless of the ultimate location to which the winning contestant ultimately takes the automobile or boat and regardless of Taxpayer's status as a listed owner on the automobile or boat title. Ind. Code § 6-2.5-3-1(a).

Taxpayer raised the issue that audit's logic seemed to apply use tax only to situations where the winner was a non-resident. After a review of relevant case law, the sales/use tax liability is that of the current taxpayer in all circumstances, not that of the winner, contractual terms notwithstanding.

FINDING

Taxpayer's protest is denied.

II.   Sales and Use Tax-Out-of-State Mailings

Taxpayer also had protested the sales tax imposed with respect to direct mailings sent to addresses outside Indiana. Audit subsequently determined that 51.6 percent of its mailings were tax exempt per Ind. Code § 6-2.5-5-24 and Ind. Code § 6-2.1-3-3.5. Taxpayer has indicated that it accepts this finding.

FINDING

Taxpayer's protest is sustained in part and denied in part.

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